Supreme Court, U.S.
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No. 10-354

In the
Supreme Court of the United States

APC ACQUISITION CORPORATION, INC.,
Petitioner,

v.

ATLANTECH, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF IN OPPOSITION

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PETITIONER'S QUESTIONS PRESENTED

I. What factors should federal appellate courts consider when evaluating the finality of a purportedly ambiguous district court judgment?

II. Does a federal appellate court have the legal authority to revisit the merits of a two-year old judgment when its appellate jurisdiction is based solely on the district court's denial of a motion to reopen the case?[1]

RESPONDENT'S QUESTION PRESENTED

I. Did the United States Court of Appeals for the First Circuit (the "First Circuit") commit an error of law in finding that a judgment was not final where: (1) the judgment was based upon a partial summary judgment order; (2) the judgment entered after bifurcation and an instruction that most claims, including damages, would not be resolved at the summary judgment hearing; and (3) the judgment did not resolve all claims against all parties in this action?

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[1] Respondent Atlantech Incorporated ("Atlantech") objects to Petitioner's second question because it incorrectly asserts that the First Circuit's jurisdiction was based "solely on the district court's denial of a motion to reopen."

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Atlantech states that: (1) it has no parent corporation; and (2) no publicly-held company owns 10% or more of its stock.

TABLE OF CONTENTS

PETITIONER'S QUESTIONS PRESENTED i

RESPONDENT'S QUESTION PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 7

I. This Case Does Not Merit Review Because APC Acquisition Merely Asserts That The First Circuit Misapplied The Properly-Stated Rule On Finality Of Judgments 8

A. There Is No Reason To Revisit The First Circuit's Application of *Harris* 9

B. The First Circuit Did Not Improperly Extend Atlantech's Appeal Deadline 11

II. The First Circuit's Decision Is Not In Conflict With A Decision Of Another Circuit 12

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

AVX Corp. v. Cabot Corp.,
424 F.3d 28 (1st Cir. 2005) 13

Bunting v. Mellen,
541 U.S. 1019 (2004) 12

Burge v. Parish of St. Tammany,
187 F.3d 452 (5th Cir. 1999) 13, 14

Coopers & Lybrand v. Livesay,
437 U.S. 463 (1978) ..... *passim*

Dayton v. Hanson,
550 U.S. 511 (2007) 12

Elliott v. White Mt. Apache Tribal Ct.,
566 F.3d 842 (9th Cir. 2009) 16

Harris v. Rivera Cruz,
20 F.3d 507 (1st Cir. 1994) ..... *passim*

Korenica v. Soc. Sec. Admin.,
207 F. App'x 888 (9th Cir. 2006) 16

Massey Ferguson Div. of Varity Corp. v. Gurley,
51 F.3d 102 (7th Cir. 1995) 13, 14

Nat'l Distrib. Agency v. Nationwide Mut. Ins. Co.,
117 F.3d 432 (9th Cir. 1997) 16

Paganis v. Blonstein,
3 F.3d 1067 (7th Cir. 1993) 16

Sierra Club v. Dep't of Transp.,
948 F.2d 568 (9th Cir. 1991) 13

Union Oil Co. v. John Brown E & C,
121 F.3d 305 (7th Cir. 1997) 13

United States v. F. & M. Schaefer Brewing Co.,
356 U.S. 227 (1958) 15, 16

Wolf v. Banco Nacional de Mexico, S.A.,
721 F.2d 660 (9th Cir. 1983) 13, 14

Wrotten v. New York,
No. 09-9634, 2010 WL 2243753 (S. Ct. June 7,
2010) 7

STATUTES

28 U.S.C. § 1291 13

RULES

Fed. R. App. P. 4 . . . . . 11, 12

Fed. R. App. P. 4(a)(1)(A) 11

Fed. R. Civ. P. 54(b) . . . . . *passim*

Fed. R. Civ. P. 58 . . . . . 13, 15

Sup. Ct. R. 10 . . . . . 7, 9, 12

Sup. Ct. R. 10(a) 12

Sup. Ct. R. 11 7

STATEMENT OF THE CASE

Prior to going out of business, Atlantech was a Massachusetts-based sales company that sold and exported aircraft cockpit displays. Atlantech historically fulfilled many of its customer contracts by purchasing these displays from American Panel Corporation ("APC"). Dating back to December 2003, Atlantech had two primary contracts with APC (the "1040 MOA" and the "890 MOA") outlining the terms of the purchases of two sizes of displays from APC: 10.4 inch displays (the "1040 Displays") and 8.9 inch displays (the "890 Displays"). In exchange for certain fees paid by Atlantech, these two contracts obligated APC to provide Atlantech with warranty support, sales support, and to ensure that the 1040 Displays and the 890 Displays would be available for purchase for at least ten years. These contracts also required APC to create and maintain certain blueprints for these displays, and to turn those blueprints over to Atlantech as a non-exclusive remedy in the event that APC was unable to fulfill its warranty, support, or product availability obligations.

After Atlantech entered into a multi-million dollar contract with its primary customer in 2005 for the delivery of two hundred 1040 Displays in reliance on APC's warranty, support, and product availability obligations, Atlantech submitted a purchase order to APC in December 2005 to fulfill that contract. APC accepted the purchase order. In 2006 and early 2007, however, APC breached its warranty, support, and product availability obligations by continuously failing to deliver functional displays pursuant to the terms of the 1040 MOA. Indeed, APC completely failed to deliver any functional 1040 Displays pursuant to the

purchase order. As a direct result, Atlantech was not able to fulfill the contract with its primary customer, resulting in substantial damages to Atlantech, including mitigation costs, lost profits, loss of reputation, loss of future business, and ultimately the loss of its entire business. Despite the contractual requirements, APC also refused to turn over the blueprints for the 1040 Displays to Atlantech.

In January 2007, APC's parent company, Universal Avionics Systems Corporation ("Universal"), sold all of APC's assets, including the blueprints, to Petitioner APC Acquisition Corporation, Inc. ("APC Acquisition"), a business led by APC's former chief executive officer. As part of that asset sale, APC Acquisition assumed responsibility for all of APC's contractual obligations to Atlantech.[2] Following the asset sale, both APC and APC Acquisition failed to fulfill the warranty, support, and product availability obligations to Atlantech under the 1040 MOA and the 890 MOA, including the refusal to perform warranty service on the 1040 Displays and the 890 Displays. Nonetheless, both parties refused to turn over the blueprints for those displays to Atlantech. Atlantech later discovered that APC, APC Acquisition, and Universal agreed in writing among themselves to refuse to do business with Atlantech – despite the existence of the ongoing ten-year product availability requirements – unless Atlantech waived its contract claims against all three parties.

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[2] The district court ruled and the First Circuit affirmed that APC assigned these contractual obligations to APC Acquisition in January 2007.

Atlantech filed this action against Defendants APC, APC Acquisition, and Universal on February 1, 2007, requesting a jury trial and an award of monetary damages, among other prayers for relief. Atlantech's Second Amended Complaint includes six counts: (1) breach of contracts (1040 MOA and 890 MOA - warranty); (2) breach of contracts (1040 MOA and 890 MOA - support and product availability); (3) breach of contracts (1040 MOA and 890 MOA - failure to turn over blueprints); (4) breach of contract (failure to fulfill the purchase order for two hundred 1040 Displays); (5) negligent misrepresentation; and (6) tortious interference with contractual relations. On April 23, 2007, Atlantech moved for a preliminary injunction asking the district court to order the Defendants to turn over the blueprints for the displays to Atlantech.

On August 24, 2007, the district court consolidated Atlantech's preliminary injunction motion with a trial on the merits on the issues of contractual assignment and the associated liability under the contract claims. On December 3, 2007, the district court stayed merits discovery and stayed all other summary judgment issues, including a stay of Universal's cross motion for summary judgment. The consolidated preliminary injunction hearing was held on December 19, 2007. There was no indication at or before the hearing that the district court intended to rule on all claims, no discussion regarding the waiver of Atlantech's right to a jury, nor was there any argument whatsoever regarding Universal's summary judgment motion, APC's liability as assignor, Atlantech's tort claims, or Atlantech's damages.

On March 24, 2008, the district court issued an Order, Memorandum, and Judgment, (collectively, the

"March 24 Order") entering partial summary judgment in favor of Atlantech, finding: (1) that APC assigned its contractual obligations due Atlantech to APC Acquisition; (2) that APC Acquisition breached the 1040 MOA and its incorporated agreements; and (3) that Atlantech had been damaged in an undetermined amount. (App. 16-48). The district court also entered a permanent injunction requiring APC Acquisition to turn over the blueprints for the 1040 Displays to Atlantech. (App. 47). The Judgment was silent as to Atlantech's claims against APC. (App. 48). Despite that the district court stayed Universal's cross motion for summary judgment and instructed Atlantech not to respond to that motion, the March 24 Order also dismissed Universal from the action without providing notice or an opportunity to be heard on the issue to Atlantech. (App. 48). In addition, the March 24 Order bypassed a number of other claims, including: (1) Atlantech's claims for breach of the 890 MOA; (2) Atlantech's claims for tortious interference and negligent misrepresentation; and (3) Atlantech's claim for damages on all counts, which had been bifurcated into a separate phase. (App. 27-45). Ultimately, the March 24 Order was entered prior to the initiation of merits discovery and without a jury trial (or waiver thereof).

Following the entry of the March 24 Order, the district court closed the case in an electronic line order. Shortly thereafter, APC Acquisition filed an interlocutory appeal of the entry of the injunction. During the pendency of that appeal, Atlantech moved to reopen the case for further proceedings on the bypassed claims and a trial on damages. The district court denied the motion to reopen without explanation on May 7, 2008. After the First Circuit denied APC

Acquisition's interlocutory appeal, Atlantech moved to reopen the case again on March 23, 2009. The district court again denied that motion without explanation on April 22, 2009. Atlantech appealed the denial of the second motion to reopen on May 21, 2009.

On December 30, 2009, the First Circuit entered an Order asking the district court to explain itself:

> It is unclear to us why the court closed the case in the first place. The order, memorandum, and separate judgment of March 24, 2008, decided some claims (in part or whole) on the merits, bypassed others (apparently as moot), and awarded only injunctive relief on the contractual claims despite finding that Atlantech had suffered damages from one defendant's breach of contract. There was unfinished business at the time of the judgment and we should like to know why the court declined to conduct further proceedings. Until it clarifies its thinking, we take no view as to when the judgment became final--with the entry of the March 2008 judgment; the first denial of reopening; the second denial of reopening; or, as appellant maintains, never.

(App. 4-5). On January 11, 2010, the district court responded and clarified that it had intended to enter final judgment on all claims in March 2008. (App. 9-10). However, the district court did not resolve how the March 24 Order could have been final given the bifurcation, the stay orders, and the fact that it left unresolved many of Atlantech's claims. (See App. 8-15).

After inviting further briefing, on May 19, 2010, the First Circuit held that the March 24 Order "was too ambiguous to be final when it was entered ... Atlantech retained at the time of the Judgment a damage claim that had not been waived or settled or tried to a sum certain; and the Judgment itself neither purported to be final nor explicitly terminated the entire case." (App. 2). The First Circuit went on to explain that Atlantech had timely appealed because the district court's denial of the second motion to reopen "le[ft] the case for dead":

> In our view, the Judgment did not become cumulatively final until April 22, 2009, when the district judge denied reopening a second time, leaving the case for dead. The first denial of reopening occurred while the injunction appeal was pending and could reasonably have been viewed as a decision not to go forward with damages until the appellate issues (such as assignment of liability) had been resolved. The lack of an explanation extended the ambiguity of the original Judgment, forestalling finality. In the interest of fairness, we treat Atlantech's appeal of the second denial of reopening as its timely appeal ...

(App. 2). Based on that finding, the First Circuit left in place the permanent injunction, vacated the March 24 Order in part, reversed the denial of Atlantech's second motion to reopen the case, and remanded the case to the district court for further proceedings with specific instructions regarding further summary judgment briefing. (App. 3).

REASONS FOR DENYING THE WRIT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

As discussed below, this case does not merit this Court's attention and there is nothing legally remarkable about the First Circuit's ruling because: (1) the First Circuit made a routine application of the well-settled rule that a judgment must unambiguously resolve all claims against all parties in order to be final and appealable, and the March 24 Order indisputably did not do so; (2) there is no conflict among the circuit courts on this issue; and (3) APC Acquisition failed to identify any compelling reason why this Court should review the First Circuit's determination that the district court erred in treating the March 24 Order as a final judgment.

Additionally, certiorari is particularly inappropriate here, where the petition is interlocutory in nature following the First Circuit's remand for further proceedings. Sup. Ct. R. 11 (petition for a writ of certiorari to review a case that is still pending below will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court); Wrotten v. New York, No. 09-9634, 2010 WL 2243753, at *1 (S. Ct. June 7, 2010) (denying certiorari because

procedural difficulties arise from accepting cases from the interlocutory posture).

As set forth below, APC Acquisition's petition for writ of certiorari (the "Petition") runs afoul of all of these standards and therefore should be denied.

I. This Case Does Not Merit Review Because APC Acquisition Merely Asserts That The First Circuit Misapplied The Properly-Stated Rule On Finality Of Judgments

A district court judgment is final and appealable only if it unambiguously resolves all claims against all parties, ends the litigation on the merits, and leaves nothing for the court to do but execute the judgment. Coopers & Lybrand v. Livesay, 437 U.S. 463, 467 (1978) (determination of class certification did not constitute final judgment); Fed. R. Civ. P. 54(b) ("any order or other decision ... that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties"); Harris v. Rivera Cruz, 20 F.3d 507, 511 (1st Cir. 1994) (judgment is not final if it adjudicates fewer than all claims). This unremarkable standard is the precise basis for the First Circuit's ruling below. (App. 2 ("Atlantech retained at the time of the Judgment a damage claim that had not been waived or settled or tried to a sum certain; and the Judgment itself neither purported to be final nor explicitly terminated the entire case")).

The Petition nevertheless claims that the First Circuit took a "breathtaking step" in holding that the district court erred in refusing to reopen the case below. (Petition at 18). The entire Petition is

premised on the erroneous notion that the First Circuit was bound by the district court's January 2010 explanation that the March 24 Order was intended to be final, despite the undeniable fact that several of Atlantech's claims remained unresolved after the March 24 Order. (App. 2). As demonstrated below, the Petition is nothing more than an inappropriate request that this Court reexamine the First Circuit's application of the well-settled rule that a judgment is not final until all claims against all parties are resolved. Coopers, 437 U.S. at 467; Sup. Ct. R. 10 (purported misapplication of a well-settled law is not grounds for certiorari).

A. There Is No Reason To Revisit The First Circuit's Application of *Harris*

The Petition agues that the First Circuit misapplied Harris by failing to consider extrinsic evidence demonstrating that the district court intended its March 24 Order to be a final judgment. (Petition at 28-33). This is not a proper basis for certiorari for at least two reasons. First, the Petition's argument is based solely on the purported misapplication of the stated legal rule in Harris – not on Harris being an incorrect statement of the law – thus there is no compelling reason necessitating Supreme Court review. Sup. Ct. R. 10.

Second, there is nothing in the record that establishes that the First Circuit failed to consider "extrinsic evidence" to divine the district court's intent as to whether it intended the March 24 Order to be a final judgment. (See Petition at 31-33). To the contrary, on December 30, 2009, the First Circuit explicitly remanded the case for an explanation of the

"inconsistencies among the Order, Memorandum and separate Judgment, which gave the impression of 'unfinished business at the time of the judgment'" – conclusively demonstrating that the First Circuit considered the entirety of the March 24 Order in determining that final judgment did not enter in March 2008. (App. 4-5). In addition, the First Circuit plainly considered the district court's stated intentions of finality in the January 11, 2010 Memorandum (App. 1 ("[h]aving considered the Judge's Memorandum of January 11, 2010")), thereby belying the assertion that the First Circuit ignored the district court's after-the-fact explanation. (Petition at 32).

Moreover, the Petition does not cite a single case for its central proposition that a circuit court must accept a district court memorandum entered two years after an initial judgment – clarifying the judge's intent regarding the finality of that earlier judgment – as wholly determinative of whether that judgment was actually final as a matter of law. (See Petition at 28-33). To the contrary, it is well-settled that a district court judgment is final and appealable only if it unambiguously resolves all claims against all parties, regardless of the "intentions" of the district court. Coopers, 437 U.S. at 467; Fed. R. Civ. P. 54(b); Harris, 20 F.3d at 511. The First Circuit has the jurisdiction and responsibility to assure that district court judgments comply with this unremarkable rule, and nothing about the First Circuit's exercise of its jurisdiction in this case warrants this Court's consideration.

B. The First Circuit Did Not Improperly Extend Atlantech's Appeal Deadline

Parties have thirty days from the entry of judgment to file notices of appeal. Fed. R. App. P. 4(a)(1)(A). That thirty-day clock does not begin to run until final judgment enters. Coopers, 437 U.S. at 467 (federal appellate jurisdiction depends on the existence of *final* judgment); Fed. R. Civ. P. 54(b).

Here, the Petition contends that the First Circuit "misused" Harris to impermissibly extend Atlantech's appeal deadline beyond the thirty-day period allowed by Fed. R. App. P. 4, ultimately giving Atlantech upwards of one year to appeal the March 24 Order. (Petition at 33-35). In effect, the Petition contends that circuit courts are bound by the district courts' unstated "intentions" as to whether judgments are final, regardless of whether those judgments resolve all claims against all parties. Of course, nothing in the law supports this circular reasoning and the Petition offers no authority for this assertion.

Rather, the actual standard could not be more unexceptional – would-be appellants have thirty days from the date that *final* judgment enters to file a notice of appeal. Fed. R. App. P. 4(a)(1)(A); Fed. R. Civ. P. 54(b); Coopers, 437 U.S. at 467. As discussed above, the First Circuit held that: (1) *final* judgment did not enter in March 2008 because the March 24 Order did not unambiguously resolve all of Atlantech's claims; (2) appellate jurisdiction did not ripen until the district court denied the second motion to reopen in April 2009, leaving the case for dead; and (3) Atlantech properly and timely appealed the denial of that motion. (App. 2 citing Harris, 20 F.3d at 509-11).

While APC Acquisition claims that the First Circuit inappropriately extended Atlantech's appeal clock beyond the thirty-day period established by Fed. R. App. P. 4, APC Acquisition's only actual point of contention is with the First Circuit's finding that the appeal clock started in April 2009 rather than in March 2008. (Petition at 33). In making this argument, APC Acquisition effectively rehashes its claim that the First Circuit erred in not treating the March 24 Order as final. (See Petition at 33-35). As discussed above, the First Circuit did not misapply the rule regarding finality of judgments, and even assuming *arguendo* that the First Circuit misapplied the rule, the purported misapplication of a well-established rule of law is not grounds for certiorari. Sup. Ct. R. 10.

II. The First Circuit's Decision Is Not In Conflict With A Decision Of Another Circuit

In some circumstances, a certiorari petition may merit review when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Sup. Ct. R. 10(a); Bunting v. Mellen, 541 U.S. 1019, 1021 (2004) (absence of direct conflict among the circuits supported denial of writ of certiorari). Barring special circumstances, however, even petitions identifying a conflict in the circuits are routinely denied when the underlying case is of an interlocutory posture. Dayton v. Hanson, 550 U.S. 511, 515 (2007) (denying certiorari because lower court decision was not in obvious conflict with any other circuit and no special circumstances existed).

Here, the Petition fails to identify a true conflict among the circuits. Instead, the Petition suggests that circuit courts must always defer to the district courts' intent by treating all "separate document" judgments entered pursuant to Fed. R. Civ. P. 58 as final and appealable judgments, even in cases where it is ambiguous as to whether the district court actually entered judgment on all claims against all parties. (Petition at 22-26). But the Petition fails to cite to any decision from any circuit that holds that a district court's unspoken intent as to the finality of a judgment is always determinative and binding on the circuit court, and thus there is no conflict created by the First Circuit's ruling below.[3]

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[3] The circuits all follow this Court's well-established rule that a judgment is not final unless it unambiguously resolves all claims against all parties. Coopers, 437 U.S. at 467; Fed. R. Civ. P. 54(b); Harris, 20 F.3d at 511; AVX Corp. v. Cabot Corp., 424 F.3d 28, 31 (1st Cir. 2005) (final judgment could not enter because the district court had not entered judgment on all of plaintiff's claims); Burge v. Parish of St. Tammany, 187 F.3d 452, 467 (5th Cir. 1999) (when the record clearly indicates that the district court failed to adjudicate the rights and liabilities of all parties, "an order cannot be presumed to be final irrespective of the district court's intent"); Massey Ferguson Div. of Varity Corp. v. Gurley, 51 F.3d 102, 105 (1995) (7th Cir. 1995) (Easterbrook, J.) ("Not until *all* of the elements of a case have been wrapped up is there a final judgment" (emphasis in original) (citation omitted)); Union Oil Co. v. John Brown E & C, 121 F.3d 305, 309 (7th Cir. 1997) (whether a decision is final for purposes of 28 U.S.C. § 1291 generally depends on whether the decision ends the litigation on the merits and leaves nothing for the court to do but execute the judgment); Wolf v. Banco Nacional de Mexico, S.A., 721 F.2d 660, 661 (9th Cir. 1983) ("The judgment appealed from does not dispose all issues in the case and is therefore not an appealable judgment"); Sierra Club v. Dep't of Transp., 948 F.2d 568, 571-72 (9th Cir. 1991) (partial summary judgment order that did not decide all

Indeed, the First Circuit did nothing but apply the well-established rule regarding the finality of judgments, holding that the March 24 Order was "too ambiguous to be final," that it did not resolve all of Atlantech's claims, and that it did not "purport[] to be final, nor explicitly terminate[] the entire case." (App. 1-3). After the district court refused to reopen the case based on its secret belief that it had entered judgment on all claims against all parties, the First Circuit directed the district court to clarify whether it had actually intended to enter final judgment. (App. 2). In response, the district court clarified that it intended the March 24 Order to be final. (App. 8-15).

Under this Court's standard, followed by all of the circuits, any circuit court would have reached the exact same conclusion with regard to the lack of finality of the March 24 Order, despite the district court's after-the-fact clarification. Indeed, any circuit court would have found that the March 24 Order did not resolve all of the claims against all of the defendants in this case, did not end this litigation on the merits, and left "unfinished business" at the district court level. Therefore, the March 24 Order could not have constituted a final judgment starting the clock on Atlantech's appeal rights. Coopers, 437 U.S. at 467; Harris, 20 F.3d at 511; Burge, 187 F.3d at 467; Massey, 51 F.3d at 105; Wolf, 721 F.2d at 661.

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claims did not constitute an appealable final judgment). If this Court were to reverse itself and adopt the Petition's suggested rule of law, it would signal all litigants in the district court to notice appeals every time a "separate document" judgment enters, regardless of whether that judgment disposed of all claims, out of an abundance of caution that the district court may have "intended" to enter final judgment but did not explicitly say so.

Nor is there a split among the circuits with respect to the significance of the entry of a "separate document" judgment under Fed. R. Civ. P. 58. The Petition erroneously contends that the First Circuit failed to follow the "rule", which is purportedly followed in other circuits, that each and every "separate document" judgment entered by a district court pursuant to Fed. R. Civ. P. 58 must be, by definition, a final judgment. (Petition at 23 ("Other circuits, on the other hand, have clearly indicated their unwillingness to run roughshod over the deference due a district court's separate judgment"); Petition at 26 (Other circuits espouse the "far more sensible view that district courts' separate, final judgments are final")). But that is simply not the rule in any circuit -- a "separate document" judgment entered pursuant to Fed. R. Civ. P. 58, just like any district court judgment, must unambiguously resolve all clams against all parties in order to be final. Fed. R. Civ. P. 54(b) ("any order or other decision ... that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties"); United States v. F. & M. Schaefer Brewing Co., 356 U.S. 227, 231-32 (1958) (final judgment did not enter despite that judgment was outlined in a separate document pursuant to Rule 58).

The Petition essentially attempts to blur the line between final judgments, as defined by Fed. R. Civ. P. 54(b), and separate document judgments, as defined by Fed. R. Civ. P. 58. Ultimately, the mere fact that the district court entered a "separate document" pursuant to Rule 58 as part of the March 24 Order is irrelevant to whether the March 24 Order unambiguously resolved all claims against all parties, thus rendering

the case final and appealable. Coopers, 437 U.S. at 467; Fed. R. Civ. P. 54(b); Schaefer Brewing, 356 U.S. at 231-32.

The cases cited by APC Acquisition do not support the proposition that any circuit has a rule treating all separate document judgments entered at the district court level as final judgments, regardless of whether those separate document judgments resolve all claims against all parties. (Petition at 23-24). In three of the four cases cited in the Petition on this point, the circuit courts explicitly found that the judgment decided below resolved all of the claims at issue in the underlying case, and therefore those circuit courts did not reach the question of whether an ambiguous judgment entered as a separate document must always be treated as final. See Elliott v. White Mt. Apache Tribal Ct., 566 F.3d 842, 846 (9th Cir. 2009) (finding full adjudication of all issues); Nat'l Distrib. Agency v. Nationwide Mut. Ins. Co., 117 F.3d 432, 434 (9th Cir. 1997) (district court "left no claims unresolved"); Paganis v. Blonstein, 3 F.3d 1067, 1070 (7th Cir. 1993) (judgment dismissed entire action). In the fourth case relied upon by APC Acquisition, Korenica v. Soc. Sec. Admin., 207 F. App'x 888, 889 (9th Cir. 2006), the Ninth Circuit actually found that final judgment did not enter in the case below because the judgment was too ambiguous to be final.

CONCLUSION

Atlantech respectfully requests that this Court deny APC Acquisition's Petition for Writ of Certiorari.

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